

1 **TITLE II—FUNCTIONAL**
2 **REGULATION**
3 **Subtitle A—Brokers and Dealers**

4 **SEC. 201. DEFINITION OF BROKER.**

5 Section 3(a)(4) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

7 “(4) BROKER.—

8 “(A) IN GENERAL.—The term ‘broker’
9 means any person engaged in the business of
10 effecting transactions in securities for the ac-
11 count of others.

12 “(B) EXCEPTION FOR CERTAIN BANK AC-
13 TIVITIES.—A bank shall not be considered to be
14 a broker because the bank engages in any one
15 or more of the following activities under the
16 conditions described:

17 “(i) THIRD PARTY BROKERAGE AR-
18 RANGEMENTS.—The bank enters into a
19 contractual or other written arrangement
20 with a broker or dealer registered under
21 this title under which the broker or dealer
22 offers brokerage services on or off the
23 premises of the bank if—

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1 “(I) such broker or dealer is
2 clearly identified as the person per-
3 forming the brokerage services;

4 “(II) the broker or dealer per-
5 forms brokerage services in an area
6 that is clearly marked and, to the ex-
7 tent practicable, physically separate
8 from the routine deposit-taking activi-
9 ties of the bank;

10 “(III) any materials used by the
11 bank to advertise or promote generally
12 the availability of brokerage services
13 under the arrangement clearly indi-
14 cate that the brokerage services are
15 being provided by the broker or dealer
16 and not by the bank;

17 “(IV) any materials used by the
18 bank to advertise or promote generally
19 the availability of brokerage services
20 under the arrangement are in compli-
21 ance with the Federal securities laws
22 before distribution;

23 “(V) bank employees (other than
24 associated persons of a broker or deal-
25 er who are qualified pursuant to the

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1 rules of a self-regulatory organization)
2 perform only clerical or ministerial
3 functions in connection with broker-
4 age transactions including scheduling
5 appointments with the associated per-
6 sons of a broker or dealer, except that
7 bank employees may forward cus-
8 tomer funds or securities and may de-
9 scribe in general terms the types of
10 investment vehicles available from the
11 bank and the broker or dealer under
12 the arrangement;

13 “(VI) bank employees do not re-
14 ceive incentive compensation for any
15 brokerage transaction unless such em-
16 ployees are associated persons of a
17 broker or dealer and are qualified
18 pursuant to the rules of a self-regu-
19 latory organization, except that the
20 bank employees may receive com-
21 pensation for the referral of any cus-
22 tomer if the compensation is a nomi-
23 nal one-time cash fee of a fixed dollar
24 amount and the payment of the fee is

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1 not contingent on whether the referral
2 results in a transaction;

3 “(VII) such services are provided
4 by the broker or dealer on a basis in
5 which all customers which receive any
6 services are fully disclosed to the
7 broker or dealer;

8 “(VIII) the bank does not carry
9 a securities account of the customer
10 except as permitted under clause (ii)
11 or (viii) of this subparagraph; and

12 “(IX) the bank, broker, or dealer
13 informs each customer that the bro-
14 kerage services are provided by the
15 broker or dealer and not by the bank
16 and that the securities are not depos-
17 its or other obligations of the bank,
18 are not guaranteed by the bank, and
19 are not insured by the Federal De-
20 posit Insurance Corporation.

21 “(ii) TRUST ACTIVITIES.—The bank
22 effects transactions in a trustee or fidu-
23 ciary capacity in its trust department, or
24 another department where the trust or fi-
25 duciary activity is regularly examined by

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1 bank examiners under the same standards
2 and in the same way as such activities are
3 examined in the trust department, and—

4 “(I) is chiefly compensated for
5 such transactions, consistent with fi-
6 duciary principles and standards, on
7 the basis of an administration or an-
8 nual fee (payable on a monthly, quar-
9 terly, or other basis), a percentage of
10 assets under management, or a flat or
11 capped per order processing fee equal
12 to not more than the cost incurred by
13 the bank in connection with executing
14 securities transactions for trustee and
15 fiduciary customers, or any combina-
16 tion of such fees; and

17 “(II) does not solicit brokerage
18 business, other than by advertising
19 that it effects transactions in securi-
20 ties in conjunction with advertising its
21 other trust activities.

22 “(iii) PERMISSIBLE SECURITIES
23 TRANSACTIONS.—The bank effects trans-
24 actions in—

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1 “(I) commercial paper, bankers
2 acceptances, or commercial bills;

3 “(II) exempted securities;

4 “(III) qualified Canadian govern-
5 ment obligations as defined in section
6 5136 of the Revised Statutes, in con-
7 formity with section 15C of this title
8 and the rules and regulations there-
9 under, or obligations of the North
10 American Development Bank; or

11 “(IV) any standardized, credit
12 enhanced debt security issued by a
13 foreign government pursuant to the
14 March 1989 plan of then Secretary of
15 the Treasury Brady, used by such for-
16 eign government to retire outstanding
17 commercial bank loans.

18 “(iv) CERTAIN STOCK PURCHASE
19 PLANS.—

20 “(I) EMPLOYEE BENEFIT
21 PLANS.—The bank effects trans-
22 actions, as a registered transfer agent
23 (including as a registrar of stocks), in
24 the securities of an issuer as part of
25 any pension, retirement, profit-shar-

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1 ing, bonus, thrift, savings, incentive,
2 or other similar benefit plan for the
3 employees of that issuer or its affili-
4 ates, if—

5 “(aa) the bank does not so-
6 licit transactions or provide in-
7 vestment advice with respect to
8 the purchase or sale of securities
9 in connection with the plan; and

10 “(bb) the bank’s compensa-
11 tion for such plan or program
12 consists chiefly of administration
13 fees, or flat or capped per order
14 processing fees, or both.

15 “(II) DIVIDEND REINVESTMENT
16 PLANS.—The bank effects trans-
17 actions, as a registered transfer agent
18 (including as a registrar of stocks), in
19 the securities of an issuer as part of
20 that issuer’s dividend reinvestment
21 plan, if—

22 “(aa) the bank does not so-
23 licit transactions or provide in-
24 vestment advice with respect to

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1 the purchase or sale of securities
2 in connection with the plan;

3 “(bb) the bank does not net
4 shareholders’ buy and sell orders,
5 other than for programs for odd-
6 lot holders or plans registered
7 with the Commission; and

8 “(cc) the bank’s compensa-
9 tion for such plan or program
10 consists chiefly of administration
11 fees, or flat or capped per order
12 processing fees, or both.

13 “(III) ISSUER PLANS.—The bank
14 effects transactions, as a registered
15 transfer agent (including as a reg-
16 istrar of stocks), in the securities of
17 an issuer as part of that issuer’s plan
18 for the purchase or sale of that
19 issuer’s shares, if—

20 “(aa) the bank does not so-
21 licit transactions or provide in-
22 vestment advice with respect to
23 the purchase or sale of securities
24 in connection with the plan or
25 program;

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1 “(bb) the bank does not net
2 shareholders’ buy and sell orders,
3 other than for programs for odd-
4 lot holders or plans registered
5 with the Commission; and

6 “(cc) the bank’s compensa-
7 tion for such plan or program
8 consists chiefly of administration
9 fees, or flat or capped per order
10 processing fees, or both.

11 “(IV) PERMISSIBLE DELIVERY
12 OF MATERIALS.—The exception to
13 being considered a broker for a bank
14 engaged in activities described in sub-
15 clauses (I), (II), and (III) will not be
16 affected by a bank’s delivery of writ-
17 ten or electronic plan materials to em-
18 ployees of the issuer, shareholders of
19 the issuer, or members of affinity
20 groups of the issuer, so long as such
21 materials are—

22 “(aa) comparable in scope or
23 nature to that permitted by the
24 Commission as of the date of the

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1 enactment of the Financial Serv-
2 ices Act of 1999; or

3 “(bb) otherwise permitted by
4 the Commission.

5 “(v) SWEEP ACCOUNTS.—The bank
6 effects transactions as part of a program
7 for the investment or reinvestment of de-
8 posit funds into any no-load, open-end
9 management investment company reg-
10 istered under the Investment Company Act
11 of 1940 that holds itself out as a money
12 market fund.

13 “(vi) AFFILIATE TRANSACTIONS.—
14 The bank effects transactions for the ac-
15 count of any affiliate (as defined in section
16 2 of the Bank Holding Company Act of
17 1956) of the bank other than—

18 “(I) a registered broker or deal-
19 er; or

20 “(II) an affiliate that is engaged
21 in merchant banking, as described in
22 section 6(c)(3)(H) of the Bank Hold-
23 ing Company Act of 1956.

24 “(vii) PRIVATE SECURITIES OFFER-
25 INGS.—The bank—

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1 “(I) effects sales as part of a pri-
2 mary offering of securities not involv-
3 ing a public offering, pursuant to sec-
4 tion 3(b), 4(2), or 4(6) of the Securi-
5 ties Act of 1933 or the rules and reg-
6 ulations issued thereunder;

7 “(II) at any time after one year
8 after the date of enactment of the Fi-
9 nancial Services Act of 1999, is not
10 affiliated with a broker or dealer that
11 has been registered for more than one
12 year; and

13 “(III) effects transactions exclu-
14 sively with qualified investors.

15 “(viii) SAFEKEEPING AND CUSTODY
16 ACTIVITIES.—

17 “(I) IN GENERAL.—The bank, as
18 part of customary banking activities—

19 “(aa) provides safekeeping
20 or custody services with respect
21 to securities, including the exer-
22 cise of warrants and other rights
23 on behalf of customers;

24 “(bb) facilitates the transfer
25 of funds or securities, as a custo-

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1 dian or a clearing agency, in con-
2 nection with the clearance and
3 settlement of its customers'
4 transactions in securities;

5 “(cc) effects securities lend-
6 ing or borrowing transactions
7 with or on behalf of customers as
8 part of services provided to cus-
9 tomers pursuant to division (aa)
10 or (bb) or invests cash collateral
11 pledged in connection with such
12 transactions; or

13 “(dd) holds securities
14 pledged by a customer to another
15 person or securities subject to
16 purchase or resale agreements in-
17 volving a customer, or facilitates
18 the pledging or transfer of such
19 securities by book entry or as
20 otherwise provided under applica-
21 ble law, if the bank maintains
22 records separately identifying the
23 securities and the customer.

24 “(II) EXCEPTION FOR CARRYING
25 BROKER ACTIVITIES.—The exception

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1 to being considered a broker for a
2 bank engaged in activities described in
3 subclause (I) shall not apply if the
4 bank, in connection with such activi-
5 ties, acts in the United States as a
6 carrying broker (as such term, and
7 different formulations thereof, are
8 used in section 15(c)(3) of this title
9 and the rules and regulations there-
10 under) for any broker or dealer, un-
11 less such carrying broker activities are
12 engaged in with respect to government
13 securities (as defined in paragraph
14 (42) of this subsection).

15 “(ix) EXCEPTED FINANCIAL PROD-
16 UCTS.—The bank effects transactions in
17 excepted financial products, as defined in
18 paragraph (56)(A) of this subsection.

19 “(x) MUNICIPAL SECURITIES.—The
20 bank effects transactions in municipal se-
21 curities.

22 “(xi) DE MINIMIS EXCEPTION.—The
23 bank effects, other than in transactions re-
24 ferred to in clauses (i) through (x), not
25 more than 500 transactions in securities in

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1 any calendar year, and such transactions
2 are not effected by an employee of the
3 bank who is also an employee of a broker
4 or dealer.

5 “(C) BROKER DEALER EXECUTION.—The
6 exception to being considered a broker for a
7 bank engaged in activities described in clauses
8 (ii), (iv), and (viii) of subparagraph (B) shall
9 not apply if the activities described in such pro-
10 visions result in the trade in the United States
11 of any security that is a publicly traded security
12 in the United States, unless—

13 “(i) the bank directs such trade to a
14 registered broker or dealer for execution;

15 “(ii) the trade is a cross trade or
16 other substantially similar trade of a secu-
17 rity that—

18 “(I) is made by the bank or be-
19 tween the bank and an affiliated fidu-
20 ciary; and

21 “(II) is not in contravention of
22 fiduciary principles established under
23 applicable Federal or State law; or

24 “(iii) the trade is conducted in some
25 other manner permitted under rules, regu-

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1 lations, or orders as the Commission may
2 prescribe or issue.

3 “(D) FIDUCIARY CAPACITY.—For purposes
4 of subparagraph (B)(ii), the term ‘fiduciary ca-
5 pacity’ means—

6 “(i) in the capacity as trustee, execu-
7 tor, administrator, guardian, assignee, re-
8 ceiver, or custodian under a uniform gift to
9 minor act, or as an investment adviser if
10 the bank receives a fee for its investment
11 advice;

12 “(ii) in any capacity in which the
13 bank possesses investment discretion on
14 behalf of another; or

15 “(iii) in any other similar capacity.

16 “(F) EXCEPTION FOR ENTITIES SUBJECT
17 TO SECTION 15(e).—The term ‘broker’ does not
18 include a bank that—

19 “(i) was, immediately prior to the en-
20 actment of the Financial Services Act of
21 1999, subject to section 15(e) of this title;
22 and

23 “(ii) is subject to such restrictions
24 and requirements as the Commission con-
25 siders appropriate.”.

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1 **SEC. 202. DEFINITION OF DEALER.**

2 Section 3(a)(5) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

4 “(5) DEALER.—

5 “(A) IN GENERAL.—The term ‘dealer’
6 means any person engaged in the business of
7 buying and selling securities for such person’s
8 own account through a broker or otherwise.

9 “(B) EXCEPTION FOR PERSON NOT EN-
10 GAGED IN THE BUSINESS OF DEALING.—The
11 term ‘dealer’ does not include a person that
12 buys or sells securities for such person’s own
13 account, either individually or in a fiduciary ca-
14 pacity, but not as a part of a regular business.

15 “(C) EXCEPTION FOR CERTAIN BANK AC-
16 TIVITIES.—A bank shall not be considered to be
17 a dealer because the bank engages in any of the
18 following activities under the conditions de-
19 scribed:

20 “(i) PERMISSIBLE SECURITIES TRANS-
21 ACTIONS.—The bank buys or sells—

22 “(I) commercial paper, bankers
23 acceptances, or commercial bills;

24 “(II) exempted securities;

25 “(III) qualified Canadian govern-
26 ment obligations as defined in section

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1 5136 of the Revised Statutes of the
2 United States, in conformity with sec-
3 tion 15C of this title and the rules
4 and regulations thereunder, or obliga-
5 tions of the North American Develop-
6 ment Bank; or

7 “(IV) any standardized, credit
8 enhanced debt security issued by a
9 foreign government pursuant to the
10 March 1989 plan of then Secretary of
11 the Treasury Brady, used by such for-
12 eign government to retire outstanding
13 commercial bank loans.

14 “(ii) INVESTMENT, TRUSTEE, AND FI-
15 DUCIARY TRANSACTIONS.—The bank buys
16 or sells securities for investment
17 purposes—

18 “(I) for the bank; or

19 “(II) for accounts for which the
20 bank acts as a trustee or fiduciary.

21 “(iii) ASSET-BACKED TRANS-
22 ACTIONS.—The bank engages in the
23 issuance or sale to qualified investors,
24 through a grantor trust or other separate
25 entity, of securities backed by or rep-

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1 resenting an interest in notes, drafts, ac-
2 ceptances, loans, leases, receivables, other
3 obligations (other than securities of which
4 the bank is not the issuer), or pools of any
5 such obligations predominantly originated
6 by the bank, or an affiliate of any such
7 bank other than a broker or dealer, or, in
8 the case of mortgage obligations or con-
9 sumer-related receivables, a syndicate of
10 banks of which the bank is a member
11 (other than as an insignificant member).

12 “(iv) EXCEPTED FINANCIAL PROD-
13 UCTS.—The bank buys or sells excepted fi-
14 nancial products, as defined in paragraph
15 (56)(A) of this subsection.

16 “(iv) DERIVATIVE INSTRUMENTS.—
17 The bank issues, buys, or sells any deriva-
18 tive instrument to which the bank is a
19 party—

20 “(I) to or from a corporation,
21 limited liability company, or partner-
22 ship that owns and invests on a dis-
23 cretionary basis, not less than
24 \$100,000,000 in investments, or to or
25 from a qualified investor, except that

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1 if the instrument provides for the de-
2 livery of one or more securities (other
3 than a derivative instrument or gov-
4 ernment security), the transaction
5 shall be effected with or through a
6 registered broker or dealer; or

7 “(II) to or from other persons,
8 except that if the derivative instru-
9 ment provides for the delivery of one
10 or more securities (other than a deriv-
11 ative instrument or government secu-
12 rity), or is a security (other than a
13 government security), the transaction
14 shall be effected with or through a
15 registered broker or dealer; or

16 “(III) to or from any person if
17 the instrument is neither a security
18 nor provides for the delivery of one or
19 more securities (other than a deriva-
20 tive instrument).”.

21 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**
22 **TIES OFFERINGS.**

23 Section 15A of the Securities Exchange Act of 1934
24 (15 U.S.C. 78o-3) is amended by inserting after sub-
25 section (i) the following new subsection:

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1 “(j) REGISTRATION FOR SALES OF PRIVATE SECURI-
2 TIES OFFERINGS.—A registered securities association
3 shall create a limited qualification category for any associ-
4 ated person of a member who effects sales as part of a
5 primary offering of securities not involving a public offer-
6 ing, pursuant to section 3(b), 4(2), or 4(6) of the Securi-
7 ties Act of 1933 and the rules and regulations thereunder,
8 and shall deem qualified in such limited qualification cat-
9 egory, without testing, any bank employee who, in the six
10 month period preceding the date of enactment of this Act,
11 engaged in effecting such sales.”.

12 **SEC. 204. INFORMATION SHARING.**

13 Section 18 of the Federal Deposit Insurance Act is
14 amended by adding at the end the following new sub-
15 section:

16 “(t) RECORDKEEPING REQUIREMENTS.—

17 “(1) REQUIREMENTS.—Each appropriate Fed-
18 eral banking agency, after consultation with and
19 consideration of the views of the Commission, shall
20 establish recordkeeping requirements for banks rely-
21 ing on exceptions contained in paragraphs (4) and
22 (5) of section 3(a) of the Securities Exchange Act of
23 1934. Such recordkeeping requirements shall be suf-
24 ficient to demonstrate compliance with the terms of
25 such exceptions and be designed to facilitate compli-

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1 ance with such exceptions. Each appropriate Federal
2 banking agency shall make any such information
3 available to the Commission upon request.

4 “(2) DEFINITIONS.—As used in this subsection
5 the term ‘Commission’ means the Securities and Ex-
6 change Commission.”.

7 **SEC. 205. TREATMENT OF NEW HYBRID PRODUCTS.**

8 Section 15 of the Securities Exchange Act of 1934
9 (15 U.S.C. 78o) is amended by adding at the end the fol-
10 lowing new subsection:

11 “(i) RULEMAKING TO EXTEND REQUIREMENTS TO
12 NEW HYBRID PRODUCTS.—

13 “(1) LIMITATION.—The Commission shall
14 not—

15 “(A) require a bank to register as a broker
16 or dealer under this section because the bank
17 engages in any transaction in, or buys or sells,
18 a new hybrid product; or

19 “(B) bring an action against a bank for a
20 failure to comply with a requirement described
21 in subparagraph (A);

22 unless the Commission has imposed such require-
23 ment by rule or regulation issued in accordance with
24 this section.

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1 “(2) CRITERIA FOR RULEMAKING.—The Com-
2 mission shall not impose a requirement under para-
3 graph (1) of this subsection with respect to any new
4 hybrid product unless the Commission determines
5 that—

6 “(A) the new hybrid product is a security;
7 and

8 “(B) imposing such requirement is nec-
9 essary or appropriate in the public interest and
10 for the protection of investors, consistent with
11 the requirements of section 3(f).

12 “(3) NEW HYBRID PRODUCT.—For purposes of
13 this subsection, the term ‘new hybrid product’ means
14 a product that—

15 “(A) was not subjected to regulation by
16 the Commission as a security prior to the date
17 of enactment of this subsection; and

18 “(B) is not a excepted financial product, as
19 such term is defined in section 3(a)(56)(A) of
20 this title.

21 “(4) CONSULTATION.—In promulgating rules
22 under this subsection, the Commission shall consult
23 with and consider the views of the appropriate regu-
24 latory agencies concerning the proposed rule and the
25 impact on the banking industry.”.

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1 **SEC. 206. ADDITIONAL DEFINITIONS.**

2 Section 3(a) of the Securities Exchange Act of 1934
3 is amended by adding at the end the following new para-
4 graphs:

5 “(54) DERIVATIVE INSTRUMENT.—

6 “(A) DEFINITION.—The term ‘derivative
7 instrument’ means any individually negotiated
8 contract, agreement, warrant, note, or option
9 that is based, in whole or in part, on the value
10 of, any interest in, or any quantitative measure
11 or the occurrence of any event relating to, one
12 or more commodities, securities, currencies, in-
13 terest or other rates, indices, or other assets,
14 but does not include an excepted financial prod-
15 uct, as defined in clauses (i) through (iv) of
16 paragraph (56)(A) of this subsection.

17 “(B) CLASSIFICATION LIMITED.—Classi-
18 fication of a particular contract as a derivative
19 instrument pursuant to this paragraph shall not
20 be construed as finding or implying that such
21 instrument is or is not a security for any pur-
22 pose under the securities laws, or is or is not
23 an account, agreement, contract, or transaction
24 for any purpose under the Commodity Ex-
25 change Act.

26 “(55) QUALIFIED INVESTOR.—

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1 “(A) DEFINITION.—For purposes of this
2 title, the term ‘qualified investor’ means—

3 “(i) any investment company reg-
4 istered with the Commission under section
5 8 of the Investment Company Act of 1940;

6 “(ii) any issuer eligible for an exclu-
7 sion from the definition of investment com-
8 pany pursuant to section 3(c)(7) of the In-
9 vestment Company Act of 1940;

10 “(iii) any bank (as defined in para-
11 graph (6) of this subsection), savings and
12 loan association (as defined in section 3(b)
13 of the Federal Deposit Insurance Act),
14 broker, dealer, insurance company (as de-
15 fined in section 2(a)(13) of the Securities
16 Act of 1933), or business development
17 company (as defined in section 2(a)(48) of
18 the Investment Company Act of 1940);

19 “(iv) any small business investment
20 company licensed by the United States
21 Small Business Administration under sec-
22 tion 301(c) or (d) of the Small Business
23 Investment Act of 1958;

24 “(v) any State sponsored employee
25 benefit plan, or any other employee benefit

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1 plan, within the meaning of the Employee
2 Retirement Income Security Act of 1974,
3 other than an individual retirement ac-
4 count, if the investment decisions are made
5 by a plan fiduciary, as defined in section
6 3(21) of that Act, which is either a bank,
7 savings and loan association, insurance
8 company, or registered investment adviser;

9 “(vi) any trust whose purchases of se-
10 curities are directed by a person described
11 in clauses (i) through (v) of this subpara-
12 graph;

13 “(vii) any market intermediary ex-
14 empt under section 3(c)(2) of the Invest-
15 ment Company Act of 1940;

16 “(viii) any associated person of a
17 broker or dealer other than a natural per-
18 son;

19 “(ix) any foreign bank (as defined in
20 section 1(b)(7) of the International Bank-
21 ing Act of 1978); or

22 “(x) the government of any foreign
23 country.

24 “(B) ADDITIONAL QUALIFICATIONS DE-
25 FINED.—For purposes of paragraphs

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1 (4)(B)(vii), (5)(C)(iii), and (56)(A)(v) of this
2 subsection, the term ‘qualified investor’ also
3 means—

4 “(i) any corporation, company, or
5 partnership that owns and invests on a dis-
6 cretionary basis, not less than \$10,000,000
7 in investments;

8 “(ii) any natural person who owns
9 and invests on a discretionary basis, not
10 less than \$10,000,000 in investments;

11 “(iii) any government or political sub-
12 division, agency, or instrumentality of a
13 government who owns and invests on a dis-
14 cretionary basis not less than \$50,000,000
15 in investments; or

16 “(iv) any multinational or supra-
17 national entity or any agency or instru-
18 mentality thereof.

19 “(C) ADDITIONAL AUTHORITY.—The Com-
20 mission may, by rule or order, define a ‘quali-
21 fied investor’ as any other person, other than a
22 natural person, taking into consideration such
23 factors as the person’s financial sophistication,
24 net worth, and knowledge and experience in fi-
25 nancial matters.

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1 “(56) EXCEPTED FINANCIAL PRODUCTS.—

2 “(A) IN GENERAL.—For purposes of para-
3 graphs (4) and (5) of this subsection, the term
4 ‘excepted financial product’ means—

5 “(i) a deposit account, savings ac-
6 count, certificate of deposit, or other de-
7 posit instrument issued by a bank;

8 “(ii) a banker’s acceptance;

9 “(iii) a letter of credit issued or loan
10 made by a bank;

11 “(iv) a debit account at a bank arising
12 from a credit card or similar arrangement;

13 “(v) a participation in a loan which
14 the bank or an affiliate of the bank (other
15 than a broker or dealer) funds, participates
16 in, or owns that is sold—

17 “(I) to qualified investors; or

18 “(II) to other persons that—

19 “(aa) have the opportunity
20 to review and assess any material
21 information, including informa-
22 tion regarding the borrower’s
23 creditworthiness; and

24 “(bb) based on such factors
25 as financial sophistication, net

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1 worth, and knowledge and experi-
2 ence in financial matters, have
3 the capability to evaluate the in-
4 formation available, as deter-
5 mined under generally applicable
6 banking standards or guidelines;
7 or

8 “(vi) a derivative instrument that in-
9 volves or relates to—

10 “(I) currencies, except options on
11 currencies that trade on a national se-
12 curities exchange;

13 “(II) interest rates, except inter-
14 est rate derivative instruments that—

15 “(aa) are based on a secu-
16 rity or a group or index of securi-
17 ties (other than government secu-
18 rities or a group or index of gov-
19 ernment securities);

20 “(bb) provide for the deliv-
21 ery of one or more securities
22 (other than government securi-
23 ties); or

24 “(cc) trade on a national se-
25 curities exchange; or

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1 “(III) commodities, other rates,
2 indices, or other assets, except deriva-
3 tive instruments that—

4 “(aa) are securities or that
5 are based on a group or index of
6 securities (other than government
7 securities or a group or index of
8 government securities);

9 “(bb) provide for the deliv-
10 ery of one or more securities
11 (other than government securi-
12 ties); or

13 “(cc) trade on a national se-
14 curities exchange.

15 “(B) CLASSIFICATION LIMITED.—Classi-
16 fication of a particular product as a excepted fi-
17 nancial product pursuant to this subsection
18 shall not be construed as finding or implying
19 that such product is or is not a security for any
20 purpose under the securities laws, or is or is
21 not an account, agreement, contract, or trans-
22 action for any purpose under the Commodity
23 Exchange Act.”.

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1 SEC. 207. GOVERNMENT SECURITIES DEFINED.

2 Section 3(a)(42) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78c(a)(42)) is amended—

4 (1) by striking “or” at the end of subparagraph
5 (C);

6 (2) by striking the period at the end of sub-
7 paragraph (D) and inserting “; or”; and

8 (3) by adding at the end the following new sub-
9 paragraph:

10 “(E) for purposes of sections 15, 15C, and
11 17A as applied to a bank, a qualified Canadian
12 government obligation as defined in section
13 5136 of the Revised Statutes of the United
14 States.”.

15 SEC. 208. EFFECTIVE DATE.

16 This subtitle shall take effect at the end of the 270-
17 day period beginning on the date of the enactment of this
18 Act.

19 SEC. 209. RULE OF CONSTRUCTION.

20 Nothing in this Act shall supersede, affect, or other-
21 wise limit the scope and applicability of the Commodity
22 Exchange Act (7 U.S.C. 1 et seq.).

1 **Subtitle B—Bank Investment**
2 **Company Activities**

3 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**
4 **AFFILIATED BANK.**

5 (a) MANAGEMENT COMPANIES.—Section 17(f) of the
6 Investment Company Act of 1940 (15 U.S.C. 80a-17(f))
7 is amended—

8 (1) by redesignating paragraphs (1), (2), and
9 (3) as subparagraphs (A), (B), and (C), respectively;

10 (2) by striking “(f) Every registered” and in-
11 serting the following:

12 “(f) CUSTODY OF SECURITIES.—

13 “(1) Every registered”;

14 (3) by redesignating the second, third, fourth,
15 and fifth sentences of such subsection as paragraphs
16 (2) through (5), respectively, and indenting the left
17 margin of such paragraphs appropriately; and

18 (4) by adding at the end the following new
19 paragraph:

20 “(6) The Commission may adopt rules and reg-
21 ulations, and issue orders, consistent with the pro-
22 tection of investors, prescribing the conditions under
23 which a bank, or an affiliated person of a bank, ei-
24 ther of which is an affiliated person, promoter, orga-
25 nizer, or sponsor of, or principal underwriter for, a

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1 registered management company may serve as custo-
2 dian of that registered management company.”.

3 (b) UNIT INVESTMENT TRUSTS.—Section 26 of the
4 Investment Company Act of 1940 (15 U.S.C. 80a-26) is
5 amended—

6 (1) by redesignating subsections (b) through (e)
7 as subsections (c) through (f), respectively; and

8 (2) by inserting after subsection (a) the fol-
9 lowing new subsection:

10 “(b) The Commission may adopt rules and regula-
11 tions, and issue orders, consistent with the protection of
12 investors, prescribing the conditions under which a bank,
13 or an affiliated person of a bank, either of which is an
14 affiliated person of a principal underwriter for, or deposi-
15 tor of, a registered unit investment trust, may serve as
16 trustee or custodian under subsection (a)(1).”.

17 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)
18 of the Investment Company Act of 1940 (15 U.S.C. 80a-
19 35(a)) is amended—

20 (1) in paragraph (1), by striking “or” at the
21 end;

22 (2) in paragraph (2), by striking the period at
23 the end and inserting “; or”; and

24 (3) by inserting after paragraph (2) the fol-
25 lowing:

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1 “(3) as custodian.”.

2 **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**
3 **PANY.**

4 Section 17(a) of the Investment Company Act of
5 1940 (15 U.S.C. 80a-17(a)) is amended—

6 (1) by striking “or” at the end of paragraph

7 (2);

8 (2) by striking the period at the end of para-
9 graph (3) and inserting “; or”; and

10 (3) by adding at the end the following new
11 paragraph:

12 “(4) to loan money or other property to such
13 registered company, or to any company controlled by
14 such registered company, in contravention of such
15 rules, regulations, or orders as the Commission may
16 prescribe or issue consistent with the protection of
17 investors.”.

18 **SEC. 213. INDEPENDENT DIRECTORS.**

19 (a) IN GENERAL.—Section 2(a)(19)(A) of the Invest-
20 ment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A))
21 is amended—

22 (1) by striking clause (v) and inserting the fol-
23 lowing new clause:

24 “(v) any person or any affiliated per-
25 son of a person (other than a registered in-

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1 vestment company) that, at any time dur-
2 ing the 6-month period preceding the date
3 of the determination of whether that per-
4 son or affiliated person is an interested
5 person, has executed any portfolio trans-
6 actions for, engaged in any principal trans-
7 actions with, or distributed shares for—

8 “(I) the investment company;

9 “(II) any other investment com-
10 pany having the same investment ad-
11 viser as such investment company or
12 holding itself out to investors as a re-
13 lated company for purposes of invest-
14 ment or investor services; or

15 “(III) any account over which the
16 investment company’s investment ad-
17 viser has brokerage placement discre-
18 tion,”;

19 (2) by redesignating clause (vi) as clause (vii);

20 and

21 (3) by inserting after clause (v) the following
22 new clause:

23 “(vi) any person or any affiliated per-
24 son of a person (other than a registered in-
25 vestment company) that, at any time dur-

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1 ing the 6-month period preceding the date
2 of the determination of whether that per-
3 son or affiliated person is an interested
4 person, has loaned money or other prop-
5 erty to—

6 “(I) the investment company;

7 “(II) any other investment com-
8 pany having the same investment ad-
9 viser as such investment company or
10 holding itself out to investors as a re-
11 lated company for purposes of invest-
12 ment or investor services; or

13 “(III) any account for which the
14 investment company’s investment ad-
15 viser has borrowing authority,”.

16 (b) CONFORMING AMENDMENT.—Section
17 2(a)(19)(B) of the Investment Company Act of 1940 (15
18 U.S.C. 80a-2(a)(19)(B)) is amended—

19 (1) by striking clause (v) and inserting the fol-
20 lowing new clause:

21 “(v) any person or any affiliated per-
22 son of a person (other than a registered in-
23 vestment company) that, at any time dur-
24 ing the 6-month period preceding the date
25 of the determination of whether that per-

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1 son or affiliated person is an interested
2 person, has executed any portfolio trans-
3 actions for, engaged in any principal trans-
4 actions with, or distributed shares for—

5 “(I) any investment company for
6 which the investment adviser or prin-
7 cipal underwriter serves as such;

8 “(II) any investment company
9 holding itself out to investors, for pur-
10 poses of investment or investor serv-
11 ices, as a company related to any in-
12 vestment company for which the in-
13 vestment adviser or principal under-
14 writer serves as such; or

15 “(III) any account over which the
16 investment adviser has brokerage
17 placement discretion,”;

18 (2) by redesignating clause (vi) as clause (vii);

19 and

20 (3) by inserting after clause (v) the following
21 new clause:

22 “(vi) any person or any affiliated per-
23 son of a person (other than a registered in-
24 vestment company) that, at any time dur-
25 ing the 6-month period preceding the date

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1 of the determination of whether that per-
2 son or affiliated person is an interested
3 person, has loaned money or other prop-
4 erty to—

5 “(I) any investment company for
6 which the investment adviser or prin-
7 cipal underwriter serves as such;

8 “(II) any investment company
9 holding itself out to investors, for pur-
10 poses of investment or investor serv-
11 ices, as a company related to any in-
12 vestment company for which the in-
13 vestment adviser or principal under-
14 writer serves as such; or

15 “(III) any account for which the
16 investment adviser has borrowing au-
17 thority,”.

18 (c) AFFILIATION OF DIRECTORS.—Section 10(c) of
19 the Investment Company Act of 1940 (15 U.S.C. 80a–
20 10(c)) is amended by striking “bank, except” and insert-
21 ing “bank (together with its affiliates and subsidiaries) or
22 any one bank holding company (together with its affiliates
23 and subsidiaries) (as such terms are defined in section 2
24 of the Bank Holding Company Act of 1956), except”.

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1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect at the end of the 1-year period
3 beginning on the date of enactment of this subtitle.

4 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

5 Section 35(a) of the Investment Company Act of
6 1940 (15 U.S.C. 80a-34(a)) is amended to read as fol-
7 lows:

8 “(a) MISREPRESENTATION OF GUARANTEES.—

9 “(1) IN GENERAL.—It shall be unlawful for any
10 person, issuing or selling any security of which a
11 registered investment company is the issuer, to rep-
12 resent or imply in any manner whatsoever that such
13 security or company—

14 “(A) has been guaranteed, sponsored, rec-
15 ommended, or approved by the United States,
16 or any agency, instrumentality or officer of the
17 United States;

18 “(B) has been insured by the Federal De-
19 posit Insurance Corporation; or

20 “(C) is guaranteed by or is otherwise an
21 obligation of any bank or insured depository in-
22 stitution.

23 “(2) DISCLOSURES.—Any person issuing or
24 selling the securities of a registered investment com-
25 pany that is advised by, or sold through, a bank

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1 shall prominently disclose that an investment in the
2 company is not insured by the Federal Deposit In-
3 surance Corporation or any other government agen-
4 cy. The Commission may adopt rules and regula-
5 tions, and issue orders, consistent with the protec-
6 tion of investors, prescribing the manner in which
7 the disclosure under this paragraph shall be pro-
8 vided.

9 “(3) DEFINITIONS.—The terms ‘insured deposi-
10 tory institution’ and ‘appropriate Federal banking
11 agency’ have the same meanings given as in section
12 3 of the Federal Deposit Insurance Act.”.

13 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**
14 **MENT COMPANY ACT OF 1940.**

15 Section 2(a)(6) of the Investment Company Act of
16 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as fol-
17 lows:

18 “(6) The term ‘broker’ has the same meaning
19 as in section 3 of the Securities Exchange Act of
20 1934, except that such term does not include any
21 person solely by reason of the fact that such person
22 is an underwriter for one or more investment compa-
23 nies.”.

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1 **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**
2 **MENT COMPANY ACT OF 1940.**

3 Section 2(a)(11) of the Investment Company Act of
4 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as fol-
5 lows:

6 “(11) The term ‘dealer’ has the same meaning
7 as in the Securities Exchange Act of 1934, but does
8 not include an insurance company or investment
9 company.”.

10 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**
11 **TION OF INVESTMENT ADVISER FOR BANKS**
12 **THAT ADVISE INVESTMENT COMPANIES.**

13 (a) INVESTMENT ADVISER.—Section 202(a)(11) of
14 the Investment Advisers Act of 1940 (15 U.S.C. 80b-
15 2(a)(11)) is amended in subparagraph (A), by striking
16 “investment company” and inserting “investment com-
17 pany, except that the term ‘investment adviser’ includes
18 any bank or bank holding company to the extent that such
19 bank or bank holding company serves or acts as an invest-
20 ment adviser to a registered investment company, but if,
21 in the case of a bank, such services or actions are per-
22 formed through a separately identifiable department or di-
23 vision, the department or division, and not the bank itself,
24 shall be deemed to be the investment adviser”.

25 (b) SEPARATELY IDENTIFIABLE DEPARTMENT OR
26 DIVISION.—Section 202(a) of the Investment Advisers Act

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1 of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at
2 the end the following:

3 “(26) The term ‘separately identifiable depart-
4 ment or division’ of a bank means a unit—

5 “(A) that is under the direct supervision of
6 an officer or officers designated by the board of
7 directors of the bank as responsible for the day-
8 to-day conduct of the bank’s investment adviser
9 activities for one or more investment companies,
10 including the supervision of all bank employees
11 engaged in the performance of such activities;
12 and

13 “(B) for which all of the records relating
14 to its investment adviser activities are sepa-
15 rately maintained in or extractable from such
16 unit’s own facilities or the facilities of the bank,
17 and such records are so maintained or other-
18 wise accessible as to permit independent exam-
19 ination and enforcement by the Commission of
20 this Act or the Investment Company Act of
21 1940 and rules and regulations promulgated
22 under this Act or the Investment Company Act
23 of 1940.”.

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1 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**
2 **MENT ADVISERS ACT OF 1940.**

3 Section 202(a)(3) of the Investment Advisers Act of
4 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as fol-
5 lows:

6 “(3) The term ‘broker’ has the same meaning
7 as in section 3 of the Securities Exchange Act of
8 1934.”.

9 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**
10 **MENT ADVISERS ACT OF 1940.**

11 Section 202(a)(7) of the Investment Advisers Act of
12 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as fol-
13 lows:

14 “(7) The term ‘dealer’ has the same meaning as
15 in section 3 of the Securities Exchange Act of 1934,
16 but does not include an insurance company or in-
17 vestment company.”.

18 **SEC. 220. INTERAGENCY CONSULTATION.**

19 The Investment Advisers Act of 1940 (15 U.S.C.
20 80b-1 et seq.) is amended by inserting after section 210
21 the following new section:

22 **“SEC. 210A. CONSULTATION.**

23 “(a) EXAMINATION RESULTS AND OTHER INFORMA-
24 TION.—

25 “(1) The appropriate Federal banking agency
26 shall provide the Commission upon request the re-

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1 sults of any examination, reports, records, or other
2 information to which such agency may have access
3 with respect to the investment advisory activities—

4 “(A) of any—

5 “(i) bank holding company;

6 “(ii) bank; or

7 “(iii) separately identifiable depart-
8 ment or division of a bank,

9 that is registered under section 203 of this title;
10 and

11 “(B) in the case of a bank holding com-
12 pany or bank that has a subsidiary or a sepa-
13 rately identifiable department or division reg-
14 istered under that section, of such bank or bank
15 holding company.

16 “(2) The Commission shall provide to the ap-
17 propriate Federal banking agency upon request the
18 results of any examination, reports, records, or other
19 information with respect to the investment advisory
20 activities of any bank holding company, bank, or
21 separately identifiable department or division of a
22 bank, which is registered under section 203 of this
23 title.

24 “(b) EFFECT ON OTHER AUTHORITY.—Nothing in
25 this section shall limit in any respect the authority of the

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1 appropriate Federal banking agency with respect to such
2 bank holding company, bank, or department or division
3 under any other provision of law.

4 “(c) DEFINITION.—For purposes of this section, the
5 term ‘appropriate Federal banking agency’ shall have the
6 same meaning as in section 3 of the Federal Deposit In-
7 surance Act.”.

8 **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

9 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of
10 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is
11 amended by striking “or any interest or participation in
12 any common trust fund or similar fund maintained by a
13 bank exclusively for the collective investment and reinvest-
14 ment of assets contributed thereto by such bank in its ca-
15 pacity as trustee, executor, administrator, or guardian”
16 and inserting “or any interest or participation in any com-
17 mon trust fund or similar fund that is excluded from the
18 definition of the term ‘investment company’ under section
19 3(c)(3) of the Investment Company Act of 1940”.

20 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
21 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934
22 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-
23 lows:

24 “(iii) any interest or participation in any
25 common trust fund or similar fund that is ex-

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1 cluded from the definition of the term ‘invest-
2 ment company’ under section 3(c)(3) of the In-
3 vestment Company Act of 1940;”.

4 (c) INVESTMENT COMPANY ACT OF 1940.—Section
5 3(c)(3) of the Investment Company Act of 1940 (15
6 U.S.C. 80a-3(c)(3)) is amended by inserting before the
7 period the following: “, if—

8 “(A) such fund is employed by the bank
9 solely as an aid to the administration of trusts,
10 estates, or other accounts created and main-
11 tained for a fiduciary purpose;

12 “(B) except in connection with the ordi-
13 nary advertising of the bank’s fiduciary serv-
14 ices, interests in such fund are not—

15 “(i) advertised; or

16 “(ii) offered for sale to the general
17 public; and

18 “(C) fees and expenses charged by such
19 fund are not in contravention of fiduciary prin-
20 ciples established under applicable Federal or
21 State law”.

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1 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**
2 **ING CONTROLLING INTEREST IN REG-**
3 **ISTERED INVESTMENT COMPANY.**

4 Section 15 of the Investment Company Act of 1940
5 (15 U.S.C. 80a-15) is amended by adding at the end the
6 following new subsection:

7 “(g) CONTROLLING INTEREST IN INVESTMENT COM-
8 PANY PROHIBITED.—

9 “(1) IN GENERAL.—If an investment adviser to
10 a registered investment company, or an affiliated
11 person of that investment adviser, holds a control-
12 ling interest in that registered investment company
13 in a trustee or fiduciary capacity, such person
14 shall—

15 “(A) if it holds the shares in a trustee or
16 fiduciary capacity with respect to any employee
17 benefit plan subject to the Employee Retirement
18 Income Security Act of 1974, transfer the
19 power to vote the shares of the investment com-
20 pany through to another person acting in a fi-
21 duciary capacity with respect to the plan who is
22 not an affiliated person of that investment ad-
23 viser or any affiliated person thereof; or

24 “(B) if it holds the shares in a trustee or
25 fiduciary capacity with respect to any person or
26 entity other than an employee benefit plan sub-

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1 ject to the Employee Retirement Income Secu-
2 rity Act of 1974—

3 “(i) transfer the power to vote the
4 shares of the investment company through
5 to—

6 “(I) the beneficial owners of the
7 shares;

8 “(II) another person acting in a
9 fiduciary capacity who is not an affili-
10 ated person of that investment adviser
11 or any affiliated person thereof; or

12 “(III) any person authorized to
13 receive statements and information
14 with respect to the trust who is not an
15 affiliated person of that investment
16 adviser or any affiliated person there-
17 of;

18 “(ii) vote the shares of the investment
19 company held by it in the same proportion
20 as shares held by all other shareholders of
21 the investment company; or

22 “(iii) vote the shares of the invest-
23 ment company as otherwise permitted
24 under such rules, regulations, or orders as

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1 the Commission may prescribe or issue
2 consistent with the protection of investors.

3 “(2) EXEMPTION.—Paragraph (1) shall not
4 apply to any investment adviser to a registered in-
5 vestment company, or any affiliated person of that
6 investment adviser, that holds shares of the invest-
7 ment company in a trustee or fiduciary capacity if
8 that registered investment company consists solely of
9 assets held in such capacities.

10 “(3) SAFE HARBOR.—No investment adviser to
11 a registered investment company or any affiliated
12 person of such investment adviser shall be deemed to
13 have acted unlawfully or to have breached a fidu-
14 ciary duty under State or Federal law solely by rea-
15 son of acting in accordance with clause (i), (ii), or
16 (iii) of paragraph (1)(B).”.

17 **SEC. 223. STATUTORY DISQUALIFICATION FOR BANK**
18 **WRONGDOING.**

19 Section 9(a) of the Investment Company Act of 1940
20 (15 U.S.C. 80a-9(a)) is amended in paragraphs (1) and
21 (2) by striking “securities dealer, transfer agent,” and in-
22 serting “securities dealer, bank, transfer agent,”.

23 **SEC. 224. CONFORMING CHANGE IN DEFINITION.**

24 Section 2(a)(5) of the Investment Company Act of
25 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking

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1 “(A) a banking institution organized under the laws of the
2 United States” and inserting “(A) a depository institution
3 (as defined in section 3 of the Federal Deposit Insurance
4 Act) or a branch or agency of a foreign bank (as such
5 terms are defined in section 1(b) of the International
6 Banking Act of 1978)”.

7 **SEC. 225. CONFORMING AMENDMENT.**

8 Section 202 of the Investment Advisers Act of 1940
9 (15 U.S.C. 80b-2) is amended by adding at the end the
10 following new subsection:

11 “(c) CONSIDERATION OF PROMOTION OF EFFI-
12 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
13 Whenever pursuant to this title the Commission is en-
14 gaged in rulemaking and is required to consider or deter-
15 mine whether an action is necessary or appropriate in the
16 public interest, the Commission shall also consider, in ad-
17 dition to the protection of investors, whether the action
18 will promote efficiency, competition, and capital forma-
19 tion.”.

20 **SEC. 226. EFFECTIVE DATE.**

21 This subtitle shall take effect 90 days after the date
22 of the enactment of this Act.

1 **Subtitle C—Securities and Ex-**
2 **change Commission Supervision**
3 **of Investment Bank Holding**
4 **Companies**

5 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**
6 **COMPANIES BY THE SECURITIES AND EX-**
7 **CHANGE COMMISSION.**

8 (a) AMENDMENT.—Section 17 of the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78q) is amended—

10 (1) by redesignating subsection (i) as subsection
11 (l); and

12 (2) by inserting after subsection (h) the fol-
13 lowing new subsections:

14 “(i) INVESTMENT BANK HOLDING COMPANIES.—

15 “(1) ELECTIVE SUPERVISION OF AN INVEST-
16 MENT BANK HOLDING COMPANY NOT HAVING A
17 BANK OR SAVINGS ASSOCIATION AFFILIATE.—

18 “(A) IN GENERAL.—An investment bank
19 holding company that is not—

20 “(i) an affiliate of an insured bank
21 (other than an institution described in sub-
22 paragraph (D), (F), or (G) of section
23 2(c)(2), or held under section 4(f), of the
24 Bank Holding Company Act of 1956), or
25 a savings association;

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1 “(ii) a foreign bank, foreign company,
2 or company that is described in section
3 8(a) of the International Banking Act of
4 1978; or

5 “(iii) a foreign bank that controls, di-
6 rectly or indirectly, a corporation chartered
7 under section 25A of the Federal Reserve
8 Act,

9 may elect to become supervised by filing with
10 the Commission a notice of intention to become
11 supervised, pursuant to subparagraph (B) of
12 this paragraph. Any investment bank holding
13 company filing such a notice shall be supervised
14 in accordance with this section and comply with
15 the rules promulgated by the Commission appli-
16 cable to supervised investment bank holding
17 companies.

18 “(B) NOTIFICATION OF STATUS AS A SU-
19 PERVISED INVESTMENT BANK HOLDING COM-
20 PANY.—An investment bank holding company
21 that elects under subparagraph (A) to become
22 supervised by the Commission shall file with the
23 Commission a written notice of intention to be-
24 come supervised by the Commission in such
25 form and containing such information and doc-

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1 uments concerning such investment bank hold-
2 ing company as the Commission, by rule, may
3 prescribe as necessary or appropriate in fur-
4 therance of the purposes of this section. Unless
5 the Commission finds that such supervision is
6 not necessary or appropriate in furtherance of
7 the purposes of this section, such supervision
8 shall become effective 45 days after the date of
9 receipt of such written notice by the Commis-
10 sion or within such shorter time period as the
11 Commission, by rule or order, may determine.

12 “(2) ELECTION NOT TO BE SUPERVISED BY
13 THE COMMISSION AS AN INVESTMENT BANK HOLD-
14 ING COMPANY.—

15 “(A) VOLUNTARY WITHDRAWAL.—A su-
16 pervised investment bank holding company that
17 is supervised pursuant to paragraph (1) may,
18 upon such terms and conditions as the Commis-
19 sion deems necessary or appropriate, elect not
20 to be supervised by the Commission by filing a
21 written notice of withdrawal from Commission
22 supervision. Such notice shall not become effec-
23 tive until one year after receipt by the Commis-
24 sion, or such shorter or longer period as the
25 Commission deems necessary or appropriate to

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1 ensure effective supervision of the material
2 risks to the supervised investment bank holding
3 company and to the affiliated broker or dealer,
4 or to prevent evasion of the purposes of this
5 section.

6 “(B) DISCONTINUATION OF COMMISSION
7 SUPERVISION.—If the Commission finds that
8 any supervised investment bank holding com-
9 pany that is supervised pursuant to paragraph
10 (1) is no longer in existence or has ceased to be
11 an investment bank holding company, or if the
12 Commission finds that continued supervision of
13 such a supervised investment bank holding com-
14 pany is not consistent with the purposes of this
15 section, the Commission may discontinue the
16 supervision pursuant to a rule or order, if any,
17 promulgated by the Commission under this sec-
18 tion.

19 “(3) SUPERVISION OF INVESTMENT BANK
20 HOLDING COMPANIES.—

21 “(A) RECORDKEEPING AND REPORTING.—

22 “(i) IN GENERAL.—Every supervised
23 investment bank holding company and
24 each affiliate thereof shall make and keep
25 for prescribed periods such records, furnish

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1 copies thereof, and make such reports, as
2 the Commission may require by rule, in
3 order to keep the Commission informed as
4 to—

5 “(I) the company’s or affiliate’s
6 activities, financial condition, policies,
7 systems for monitoring and control-
8 ling financial and operational risks,
9 and transactions and relationships be-
10 tween any broker or dealer affiliate of
11 the supervised investment bank hold-
12 ing company; and

13 “(II) the extent to which the
14 company or affiliate has complied with
15 the provisions of this Act and regula-
16 tions prescribed and orders issued
17 under this Act.

18 “(ii) FORM AND CONTENTS.—Such
19 records and reports shall be prepared in
20 such form and according to such specifica-
21 tions (including certification by an inde-
22 pendent public accountant), as the Com-
23 mission may require and shall be provided
24 promptly at any time upon request by the

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1 Commission. Such records and reports may
2 include—

3 “(I) a balance sheet and income
4 statement;

5 “(II) an assessment of the con-
6 solidated capital of the supervised in-
7 vestment bank holding company;

8 “(III) an independent auditor’s
9 report attesting to the supervised in-
10 vestment bank holding company’s
11 compliance with its internal risk man-
12 agement and internal control objec-
13 tives; and

14 “(IV) reports concerning the ex-
15 tent to which the company or affiliate
16 has complied with the provisions of
17 this title and any regulations pre-
18 scribed and orders issued under this
19 title.

20 “(B) USE OF EXISTING REPORTS.—

21 “(i) IN GENERAL.—The Commission
22 shall, to the fullest extent possible, accept
23 reports in fulfillment of the requirements
24 under this paragraph that the supervised
25 investment bank holding company or its af-

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1 filiates have been required to provide to
2 another appropriate regulatory agency or
3 self-regulatory organization.

4 “(ii) AVAILABILITY.—A supervised in-
5 vestment bank holding company or an af-
6 filiate of such company shall provide to the
7 Commission, at the request of the Commis-
8 sion, any report referred to in clause (i).

9 “(C) EXAMINATION AUTHORITY.—

10 “(i) FOCUS OF EXAMINATION AU-
11 THORITY.—The Commission may make ex-
12 aminations of any supervised investment
13 bank holding company and any affiliate of
14 such company in order to—

15 “(I) inform the Commission
16 regarding—

17 “(aa) the nature of the oper-
18 ations and financial condition of
19 the supervised investment bank
20 holding company and its affili-
21 ates;

22 “(bb) the financial and oper-
23 ational risks within the super-
24 vised investment bank holding
25 company that may affect any

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1 broker or dealer controlled by
2 such supervised investment bank
3 holding company; and

4 “(cc) the systems of the su-
5 pervised investment bank holding
6 company and its affiliates for
7 monitoring and controlling those
8 risks; and

9 “(II) monitor compliance with
10 the provisions of this subsection, pro-
11 visions governing transactions and re-
12 lationships between any broker or
13 dealer affiliated with the supervised
14 investment bank holding company and
15 any of the company’s other affiliates,
16 and applicable provisions of sub-
17 chapter II of chapter 53, title 31,
18 United States Code (commonly re-
19 ferred to as the ‘Bank Secrecy Act’)
20 and regulations thereunder.

21 “(ii) RESTRICTED FOCUS OF EXAMI-
22 NATIONS.—The Commission shall limit the
23 focus and scope of any examination of a
24 supervised investment bank holding com-
25 pany to—

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1 “(I) the company; and

2 “(II) any affiliate of the company
3 that, because of its size, condition, or
4 activities, the nature or size of the
5 transactions between such affiliate
6 and any affiliated broker or dealer, or
7 the centralization of functions within
8 the holding company system, could, in
9 the discretion of the Commission,
10 have a materially adverse effect on the
11 operational or financial condition of
12 the broker or dealer.

13 “(iii) DEFERENCE TO OTHER EXAMI-
14 NATIONS.—For purposes of this subpara-
15 graph, the Commission shall, to the fullest
16 extent possible, use the reports of examina-
17 tion of an institution described in subpara-
18 graph (D), (F), or (G) of section 2(c)(2),
19 or held under section 4(f), of the Bank
20 Holding Company Act of 1956 made by
21 the appropriate regulatory agency, or of a
22 licensed insurance company made by the
23 appropriate State insurance regulator.

24 “(4) HOLDING COMPANY CAPITAL.—

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1 “(A) AUTHORITY.—If the Commission
2 finds that it is necessary to adequately super-
3 vise investment bank holding companies and
4 their broker or dealer affiliates consistent with
5 the purposes of this subsection, the Commission
6 may adopt capital adequacy rules for supervised
7 investment bank holding companies.

8 “(B) METHOD OF CALCULATION.—In de-
9 veloping rules under this paragraph:

10 “(i) DOUBLE LEVERAGE.—The Com-
11 mission shall consider the use by the su-
12 pervised investment bank holding company
13 of debt and other liabilities to fund capital
14 investments in affiliates.

15 “(ii) NO UNWEIGHTED CAPITAL
16 RATIO.—The Commission shall not impose
17 under this section a capital ratio that is
18 not based on appropriate risk-weighting
19 considerations.

20 “(iii) NO CAPITAL REQUIREMENT ON
21 REGULATED ENTITIES.—The Commission
22 shall not, by rule, regulation, guideline,
23 order or otherwise, impose any capital ade-
24 quacy provision on a nonbanking affiliate
25 (other than a broker or dealer) that is in

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1 compliance with applicable capital require-
2 ments of another Federal regulatory au-
3 thority or State insurance authority.

4 “(iv) APPROPRIATE EXCLUSIONS.—
5 The Commission shall take full account of
6 the applicable capital requirements of an-
7 other Federal regulatory authority or State
8 insurance regulator.

9 “(C) INTERNAL RISK MANAGEMENT MOD-
10 ELS.—The Commission may incorporate inter-
11 nal risk management models into its capital
12 adequacy rules for supervised investment bank
13 holding companies.

14 “(5) FUNCTIONAL REGULATION OF BANKING
15 AND INSURANCE ACTIVITIES OF SUPERVISED IN-
16 VESTMENT BANK HOLDING COMPANIES.—The Com-
17 mission shall defer to—

18 “(A) the appropriate regulatory agency
19 with regard to all interpretations of, and the
20 enforcement of, applicable banking laws relating
21 to the activities, conduct, ownership, and oper-
22 ations of banks, and institutions described in
23 subparagraph (D), (F), and (G) of section
24 2(c)(2), or held under section 4(f), of the Bank
25 Holding Company Act of 1956; and

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1 “(B) the appropriate State insurance regu-
2 lators with regard to all interpretations of, and
3 the enforcement of, applicable State insurance
4 laws relating to the activities, conduct, and op-
5 erations of insurance companies and insurance
6 agents.

7 “(6) DEFINITIONS.—For purposes of this sub-
8 section and subsection (j):

9 “(A) The term ‘investment bank holding
10 company’ means—

11 “(i) any person other than a natural
12 person that owns or controls one or more
13 brokers or dealers; and

14 “(ii) the associated persons of the in-
15 vestment bank holding company.

16 “(B) The term ‘supervised investment
17 bank holding company’ means any investment
18 bank holding company that is supervised by the
19 Commission pursuant to this subsection.

20 “(C) The terms ‘affiliate’, ‘bank’, ‘bank
21 holding company’, ‘company’, ‘control’, and
22 ‘savings association’ have the meanings given to
23 those terms in section 2 of the Bank Holding
24 Company Act of 1956 (12 U.S.C. 1841).

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1 “(D) The term ‘insured bank’ has the
2 meaning given to that term in section 3 of the
3 Federal Deposit Insurance Act.

4 “(E) The term ‘foreign bank’ has the
5 meaning given to that term in section 1(b)(7)
6 of the International Banking Act of 1978.

7 “(F) The terms “person associated with an
8 investment bank holding company’ and “associ-
9 ated person of an investment bank holding com-
10 pany’ mean any person directly or indirectly
11 controlling, controlled by, or under common
12 control with, an investment bank holding com-
13 pany.

14 “(j) COMMISSION BACKUP AUTHORITY.—

15 “(1) AUTHORITY.—The Commission may make
16 inspections of any wholesale financial holding com-
17 pany that—

18 “(A) controls a wholesale financial institu-
19 tion;

20 “(B) is not a foreign bank; and

21 “(C) does not control an insured bank
22 (other than an institution permitted under sub-
23 paragraph (D), (F), or (G) of section 2(c)(2),
24 or held under section 4(f), of the Bank Holding
25 Company Act of 1956) or a savings association,

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1 and any affiliate of such company, for the purpose
2 of monitoring and enforcing compliance by the
3 wholesale financial holding company with the Fed-
4 eral securities laws.

5 “(2) LIMITATION.—The Commission shall limit
6 the focus and scope of any inspection under para-
7 graph (1) to those transactions, policies, procedures,
8 or records that are reasonably necessary to monitor
9 and enforce compliance by the wholesale financial
10 holding company or any affiliate with the Federal
11 securities laws.

12 “(3) DEFERENCE TO EXAMINATIONS.—To the
13 fullest extent possible, the Commission shall use, for
14 the purposes of this subsection, the reports of
15 examinations—

16 “(A) made by the Board of Governors of
17 the Federal Reserve System of any wholesale fi-
18 nancial holding company that is supervised by
19 the Board;

20 “(B) made by or on behalf of any State
21 regulatory agency responsible for the super-
22 vision of an insurance company of any licensed
23 insurance company; and

24 “(C) made by any Federal or State bank-
25 ing agency of any bank or institution described

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1 in subparagraph (D), (F), or (G) of section
2 2(c)(2), or held under section 4(f), of the Bank
3 Holding Company Act of 1956.

4 “(4) NOTICE.—To the fullest extent possible,
5 the Commission shall notify the appropriate regu-
6 latory agency prior to conducting an inspection of a
7 wholesale financial institution or institution de-
8 scribed in subparagraph (D), (F), or (G) of section
9 2(c)(2), or held under section 4(f), of the Bank
10 Holding Company Act of 1956.

11 “(k) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
12 MATION.—Notwithstanding any other provision of law, the
13 Commission shall not be compelled to disclose any infor-
14 mation required to be reported under subsection (h) or
15 (i) or any information supplied to the Commission by any
16 domestic or foreign regulatory agency that relates to the
17 financial or operational condition of any associated person
18 of a broker or dealer, investment bank holding company,
19 or any affiliate of an investment bank holding company.
20 Nothing in this subsection shall authorize the Commission
21 to withhold information from Congress, or prevent the
22 Commission from complying with a request for informa-
23 tion from any other Federal department or agency or any
24 self-regulatory organization requesting the information for
25 purposes within the scope of its jurisdiction, or complying

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1 with an order of a court of the United States in an action
2 brought by the United States or the Commission. For pur-
3 poses of section 552 of title 5, United States Code, this
4 subsection shall be considered a statute described in sub-
5 section (b)(3)(B) of such section 552. In prescribing regu-
6 lations to carry out the requirements of this subsection,
7 the Commission shall designate information described in
8 or obtained pursuant to subparagraphs (A), (B), and (C)
9 of subsection (i)(5) as confidential information for pur-
10 poses of section 24(b)(2) of this title.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 3(a)(34) of the Securities Exchange
13 Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by
14 adding at the end the following new subparagraphs:

15 “(H) When used with respect to an institu-
16 tion described in subparagraph (D), (F), or (G)
17 of section 2(c)(2), or held under section 4(f), of
18 the Bank Holding Company Act of 1956—

19 “(i) the Comptroller of the Currency,
20 in the case of a national bank or a bank
21 in the District of Columbia examined by
22 the Comptroller of the Currency;

23 “(ii) the Board of Governors of the
24 Federal Reserve System, in the case of a
25 State member bank of the Federal Reserve

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1 System or any corporation chartered under
2 section 25A of the Federal Reserve Act;

3 “(iii) the Federal Deposit Insurance
4 Corporation, in the case of any other bank
5 the deposits of which are insured in ac-
6 cordance with the Federal Deposit Insur-
7 ance Act; or

8 “(iv) the Commission in the case of all
9 other such institutions.”.

10 (2) Section 1112(e) of the Right to Financial
11 Privacy Act of 1978 (12 U.S.C. 3412(e)) is
12 amended—

13 (A) by striking “this title” and inserting
14 “law”; and

15 (B) by inserting “, examination reports”
16 after “financial records”.

17 **Subtitle D—Disclosure of Customer**
18 **Costs of Acquiring Financial**
19 **Products**

20 **SEC. 241. IMPROVED AND CONSISTENT DISCLOSURE.**

21 (a) REVISED REGULATIONS REQUIRED.—Within one
22 year after the date of enactment of this Act, each Federal
23 financial regulatory authority shall prescribe rules, or revi-
24 sions to its rules, to improve the accuracy, simplicity, and
25 completeness, and to make more consistent, the disclosure

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1 of information by persons subject to the jurisdiction of
2 such regulatory authority concerning any commissions,
3 fees, or other costs incurred by customers in the acqui-
4 tion of financial products.

5 (b) CONSULTATION.—In prescribing rules and revi-
6 sions under subsection (a), the Federal financial regu-
7 latory authorities shall consult with each other and with
8 appropriate State financial regulatory authorities.

9 (c) CONSIDERATION OF EXISTING DISCLOSURES.—
10 In prescribing rules and revisions under subsection (a),
11 the Federal financial regulatory authorities shall consider
12 the sufficiency and appropriateness of then existing laws
13 and rules applicable to persons subject to their jurisdic-
14 tion, and may prescribe exemptions from the rules and re-
15 visions required by subsection (a) to the extent appro-
16 priate in light of the objective of this section to increase
17 the consistency of disclosure practices.

18 (d) ENFORCEMENT.—Any rule prescribed by a Fed-
19 eral financial regulatory authority pursuant to this section
20 shall, for purposes of enforcement, be treated as a rule
21 prescribed by such regulatory authority pursuant to the
22 statute establishing such regulatory authority's jurisdic-
23 tion over the persons to whom such rule applies.

24 (e) DEFINITION.—As used in this section, the term
25 “Federal financial regulatory authority” means the Board

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1 of Governors of the Federal Reserve System, the Securi-
2 ties and Exchange Commission, the Comptroller of the
3 Currency, the Federal Deposit Insurance Corporation, the
4 Commodity Futures Trading Commission, and any self-
5 regulatory organization under the supervision of any of
6 the foregoing.